

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 28

VALLEY HEALTH SYSTEM LLC d/b/a NC-
DSH, LLP d/b/a DESERT SPRINGS
HOSPITAL MEDICAL CENTER and VALLEY
HOSPITAL MEDICAL CENTER, INC. d/b/a
VALLEY HOSPITAL MEDICAL CENTER,

and

SERVICE EMPLOYEES INTERNATIONAL
UNION, LOCAL 1107

Case Nos.: 28-CA-184993
28-CA-185013
28-CA-189709
28-CA-189730
28-CA-192354
28-CA-193581
28-CA-194185
28-CA-194194
28-CA-194450
28-CA-194471
28-CA-194790
28-CA-195235
28-CA-197426

RESPONDENTS' REQUEST TO POSTPONE HEARING

COME NOW Respondents Desert Springs Hospital Medical Center (“Desert Springs”) and Valley Hospital Medical Center (“Valley”) (collectively the “Hospitals” or “Respondents”) and, pursuant to 29 CFR 102.16(b) and 29 CFR 102.24(a), file this Request to Postpone Hearing. As set forth in detail below, the hearing in this case on June 26, 2017 was scheduled months ago to address only *two* unfair labor practice charges. Just three weeks before that hearing was scheduled to begin the Region issued an amended complaint in which it adds allegations from *eleven* new unfair labor practice charges. The allegations contained in these charges are far more complex and consequential than the initial two charges. A postponement is necessary to allow Respondents an opportunity to prepare adequately for the additional allegations in the amended complaint.

I. BACKGROUND

On December 12, 2016, Service Employees International Union, Local 1107 (the “Union”) filed unfair labor practice charges in Case Nos. 28-CA-189709 and 28-CA-189730 against Desert

Springs and Valley, respectively alleging 8(a)(2) unlawful domination of a labor organization. The Union subsequently filed first and second amended charges against each Hospital (the “Bulletin Board Charges”). The Bulletin Board Charges allege generally that the Hospitals violated Sections 8(a)(1) and (5) by removing two postings placed on bulletin boards in the Hospitals and supposedly making a “new rule” requiring Hospital approval before posting postings on the bulletin boards.

On January 25, 2017,¹ the Hospitals filed a position statement in response to the Bulletin Board Charges. The Hospitals explained that they had the right to remove the Union’s postings based on a collective bargaining agreement between the parties.

On March 7, the Regional Director issued an “Order Consolidating Cases, Consolidated Complaint and Notice of Hearing” (“Consolidated Complaint”) in which he set the hearing for May 23. The *only* charges scheduled for the hearing were the two Bulletin Board Charges. On March 20 the Hospital filed an answer to the Complaint. On May 3, the Regional Director issued an Order Rescheduling Hearing in which he rescheduled the hearing for June 26. Again, the *only* charges scheduled for the hearing were the two Bulletin Board Charges. The Regional Director rescheduled the hearing to provide time for the Region to make determinations on additional charges filed by the Union, and the Hospitals did not object.

On June 5, the Regional Director issued the “Order Further Consolidating Cases, Second Consolidated Complaint and Notice of Hearing” (“Second Consolidated Complaint”). In this complaint, the Regional Director added *eleven new charges* against the Hospitals – increasing the number of charges from *two* to *thirteen*. Moreover, many of the new charges include multiple allegations. The Second Consolidated Complaint includes *94 paragraphs* (including subparts). The vast majority of these allegations are new and were not included in the initial complaint.

¹ All dates are from 2017 unless otherwise indicated.

Although the parties have regularly corresponded by email, the Region only mailed a copy of this notice and did not email a copy to counsel for the Hospitals. The Hospitals learned of the Second Consolidated Complaint on June 7. The Hospitals immediately requested the Region's and Union's consent to postpone the hearing. However, the Region rejected the Hospitals' request on the basis that "this case is before the Agency's Injunctive Litigation Branch for 10(j)."²

II. POSTPONEMENT IS NECESSARY FOR THE HOSPITALS TO PREPARE A DEFENSE

The Hospitals respectfully request to postpone the hearing until August 14 or thereafter to provide the Hospitals sufficient time to prepare a defense. The initial Consolidated Complaint was issued by the Board on March 7 and set the hearing for May 23. The Consolidated Complaint included allegations for *only two ULP charges*, which were identical (but directed at different Hospitals). This Consolidated Complaint was issued *seventy seven days* before the hearing was scheduled to occur. Then on May 3, the Regional Director issued an Order Rescheduling Hearing in which he rescheduled the hearing for June 26. Again, this covered *only two ULP charges*, nonetheless it was issued *fifty four days* before the hearing was scheduled to occur.

The Second Consolidated Complaint was issued on June 5, but not received by the Hospitals until June 7. The Second Consolidated Complaint included allegations from *eleven new ULP charges*. However, the Hospitals were given only *nineteen days* to prepare to defend these eleven new charges.

While the number of additional allegations are staggering, of more significance is the type and scope of the additional allegations. The Consolidated Complaint addressed only the removal of two Union flyers posted at each Hospital. While the Hospitals deny that their conduct violated

² Counsel for the Union has not responded as of the time of filing this Request. Given opposition from the Region and the time sensitive nature of the Request, the Hospitals moved forward with filing.

the Act, the consequences for such a violation are generally limited to a posting. Moreover, such a hearing would likely last no more than two days.

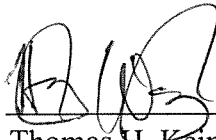
In the Second Consolidated Complaint, the Region has added far more serious – and complex – allegations. These allegations largely stem from the Hospitals withdrawing recognition of the Union as a result of receiving cards signed by a majority of employees in their respective bargaining units. Specifically, the new allegations include (1) revocation of dues deductions due to faulty language, (2) denial of access, (3) withdrawal of recognition, (4) changes to terms and conditions following the withdrawal of recognition, and (5) surveillance. Each allegation addresses a completely different set of facts and will require unique testimony from completely different witnesses – at each Hospital. Counsel for the Hospitals anticipate that a hearing on the allegations contained in the Second Consolidated Complaint will likely take two weeks or longer. Potential consequences include a bargaining order and monetary liability (among other remedies). Moreover, the result will have a substantial impact on the Hospital’s employees – a majority of whom presented cards stating that they no longer wished to be represented by the Union.

Now, with less than three weeks before the scheduled hearing date, the Region suddenly bootstrapped allegations from *eleven* ULPs to the two Bulletin Board Charges previously scheduled to be heard on June 24. The Region alone controlled the speed of the investigation into the additional allegations filed by the Union. The Hospitals cooperated fully – and timely – with each and every request that they received from the Region. The Hospitals should not be punished and denied sufficient time to present a defense.

Finally, counsel for the Region stated that it opposed the Hospitals’ request for a postponement on the basis that “this case is before the Agency’s Injunctive Litigation Branch for 10(j).” As of the date of filing this Request, the Hospitals have not been served with any documents

that indicate the Region has filed a complaint or motion for relief under 10(j). And, of course, postponing this hearing would not preclude the Region from filing a complaint in federal court seeking relief under 10(j). Moreover, the Region has been aware of many of the allegations in the complaint for months – some going back to *September 2016*. In fact, the Region elected to postpone the Hearing for one month when it benefitted the Region – and the Hospitals did no object. The Hospitals are seeking nothing more than the same treatment – to be given a fair opportunity to prepare a defense. For the reasons provided above, the Hospitals respectfully request that the hearing be postponed until August 14 or thereafter.

Dated this 8th day of June, 2017.



Thomas H. Keim, Jr.
Ford & Harrison, LLP
100 Dunbar Street, Suite 300
Spartanburg, South Carolina 29306
tkeim@fordharrison.com
Telephone: 864-699-1100
Facsimile: 864-699-1101

Henry F. Warnock
Ford & Harrison, LLP
271 17th Street, NW, Suite 1900
Atlanta, Georgia 30363
hwarnock@fordharrison.com
Telephone: 404-888-3800
Facsimile: 404-888-3863

Attorneys for Respondents

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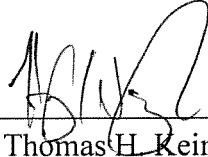
CERTIFICATE OF SERVICE

The undersigned, an attorney, hereby certifies that on June 8, 2017, he electronically served the foregoing **RESPONDENTS' REQUEST TO POSTPONE HEARING**, to following individuals:

SEIU Local 1107
2250 South Rancho Drive, Suite 165
Las Vegas, Nevada 89102-4406
cmancini@seiuinv.org

Adam Levine, Attorney at Law
Law Office of Daniel Marks
610 South 9th Street
Las Vegas, NV 89101-7013
alevine@danielmarks.net

Cornele A. Overstreet
Regional Director
NLRB Region 28
2600 North Central Avenue
Suite 1400
Phoenix, AZ 85004-3099
Stephen.kopstein@nlrb.gov



Thomas H. Keim, Jr.
Ford & Harrison, LLP
100 Dunbar Street, Suite 300
Spartanburg, South Carolina 29306
tkeim@fordharrison.com
Telephone: 864-699-1100
Facsimile: 864-699-1101

Henry F. Warnock
Ford & Harrison, LLP
271 17th Street, NW, Suite 1900
Atlanta, Georgia 30363
hwarnock@fordharrison.com
Telephone: 404-888-3800
Facsimile: 404-888-3863

Attorneys for Respondents